IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.147 to 149 of 2004

The Commissioner of Wealth-tax,
Tamil Nadu V,
Chennai. ..Appellant in T.C.(A) Nos. 147 & 148 of 2004

The Commissioner of Gift-tax,
Tamil Nadu V,
Chennai. ..Appellant in T.C.(A) No. 149 of 2004

Vs.

C.R.K.Swamy (since deceased)
Represented by Legal Representatives
1. Josephine Adhilakshmi
2. C.R.K.Arokiaraj Karunakaran
3. Regina Mohandass
4. Mary Clemence
5. B.Vinod Kumar
6. B.Jayanthi
7. B.Suganthi ..Respondents in all the T.C.(A)s.

T.C.(A) Nos.147 and 148 of 2004:

Appeals under Section 27A of the Wealth-tax Act, 1957 against the order of the Income-tax Appellate Tribunal, Madras Bench "D" in W.T.A. Nos.1500 & 1501(Mds)/1992 dated 26.02.1999 for the assessment years 1985-86 and 1986-87.

T.C.(A) No.149 of 2004:

Appeal under Section 27A of the Wealth-tax Act, 1957 read with Section 76 of the Finance (No.2 at 1998), against the order of the Income-tax Appellate Tribunal, Madras Bench "D" in G.T.A. No.49(Mds)/1992 dated 26.02.1999 for the assessment year 1984-85.

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For Appellant : Mrs.Pushya Sitaraman,
Sr.Standing Counsel for
Income-tax Department

For Respondents: Mr.M.P.Senthil Kumar

COMMON JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed by the Revenue against the order of the Income Tax Appellate Tribunal, Madras Bench "D" in W.T.A. Nos.1500 & 1501(Mds)/ 1992 and G.T.A. No. 49(Mds)/1992 for the assessment years 1985-86, 1986-87 and 1984-85. On 03.03.2004, this Court admitted the appeals and formulated the following substantial questions of law:-

> "i) Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in law in confirming the order of the Commissioner of Income Tax (Appeals) directing the Assessing Officer to recompute the assessee's net wealth after excluding the wealth of his wife, daughters-in-law and grand children attributable to the lottery winnings?
> ii) Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in law in confirming the order of the Commissioner of Income Tax (Appeals) cancelling the gift tax assessment order?"

2. The facts leading to the above substantial questions of law are as under:

The assessee C.R.K.Swamy purchased two lottery tickets of Meghalaya State Lottery and ten lottery tickets of Aero Sports Raffle conducted by Aero Club of India by spending Rs.52/- and settled them on C.R.K.Swamy Trust on 14.08.1983 for the benefit of 15 beneficiaries and handed over the said lottery tickets to the trustees Shri.D.Mohandoss, Shri. K.Bhaskaran and Shri.C.R.K.Arokiaraj. The deed of trust was executed on stamp papers of Rs.30/- purchased on 14.08.1983 from a stamp vendor in Cuddalore. The lottery was conducted on 15.08.1983. The ticket bearing No.408697 of the Aero Club of India won the first prize of Rs.1 Crore. The name of the Trust is called C.R.K.Swamy Trust. The Trust is also an assessee and it has also filed its Return. The assessee contended that the price money has to be assessed in the hands of the respective beneficiaries as the beneficiaries and their shares are determinate and known. The Assessing Officer did not agree with the plea of the assessee. The deed of trust appeared ante-dated and it was the result of an afterthought when the results of the lottery had been declared, because 14.08.1983 happened to be Sunday and 15.08.1983 happened to be Independence Day and that Sri C.R.K.Swamy was an aged man residing at

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Villupuram. The stamp paper was purchased on 14.08.1983 at Cuddalore and that the same was brought to Villupuram and got typed at Villupuram on the same day. The Assessing Officer was of the opinion that the lottery tickets were purchased at least 20 days before the date of draw of the lottery, but the Trust was formed not immediately after the purchase of the tickets, but only a day before the date of draw of the lottery. Further the Assessing Officer was of the view that corpus of the Trust, being lottery tickets numbering 12, cannot be called a property as understood in the general sense. Further the Assessing Officer held that it does not make the lottery ticket in which the buyer has speculative interest, a property with which a person could form the Trust. If the lottery tickets had not won any prize, the Trust, which was formed on 14.08.1983 would have ceased to exist on 15.08.1983 and that the tenure and period of validity of the Trust could not be a matter of speculation. The Assessing Officer also held that the income actually arose in the hands of the assessee in the present tax cases and that that there will not be any assessment in the hands of the Trust. As a protective measure, the assessment was completed in the name of C.R.K.Swamy Trust taking the income as "nil". The said assessment was processed under Section 143(3) in the status of an Association of Persons on 30.03.1988. In view of the same, the Assessing Officer held that the Trust was not a genuine one and hence it is not a valid Trust. In view of the same, the Assessing Officer held that the prize money has to be assessed only in the hands of the assessee and not in the hands of the Trust. The Wealth-tax Officer included the wealth of the appellant's wife, daughter-in-law and minor grand children and others on the same basis. In the Gift-tax assessment also, the Gift-tax Officer initiated and levied gift tax on the ground that the assessee had distributed the prize money to his close relatives. Aggrieved by the same, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeals and set aside the orders of the Assessing Officer. Aggrieved, the Revenue filed appeals to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeals by following the earlier Tribunal Order in C.R.K.Swamy Trust as well as the assessee's own case. Hence the present tax cases by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the Trust is not a genuine one and hence the levying of wealth-tax and gift-tax is justified and is in accordance with law.

4. Learned counsel for the assessee submitted that the earlier Tribunal order reached finality and also the beneficiaries received their respective shares and they have been assessed under the Act. Hence, the order passed by the Tribunal is in confirmity with law.

5. Heard the counsel. In the present cases, the Tribunal merely followed the C.R.K.Swamy Trust's case as well as the assessee's own case in I.T.A. No.1969/Mds/1989 and ITA Nos.4131 to 4133/Mds/1989, respectively and held as follows:-

> "2. We have heard the rival submissions and perused the material on record. The issues raised have

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already been concluded in favour of the assessees vide the order of this tribunal dated 31.3.1992 in ITA No.1969/Mds/1989 and ITA Nos.4131 to 4133/Mds/1989 in the case of the same assessee. Even the Reference Application filed on the aforesaid order of the Tribunal have been rejected vide the order of this Tribunal dated 20.11.1992. The learned counsel for the assessee at the time of hearing also stated that the reference application filed by the department under section 256(2) of the Act have been decided in favour of the assessee by the High Court of Madras. However, he has not been able to produce a copy of the order of the High Court readily. We, however, find that the orders of the Commissioner of Incometax (A) which have been contested against before us are based on the decision of this Tribunal. We therefore, respectfully following the order of this Tribunal dated 31.3.1992, hold that the Commissioner of Incometax (A) was justified in taking a favourable view on the appeals filed by the assessee. Under the circumstances, we do not find any reason to interfere with the orders of the Commissioner of Incometax (A) on these issues.

3. In the result, the appeals filed by the revenue are dismissed."

Against the above mentioned order of the Tribunal, the Revenue filed appeals to the High Court. The appeals were filed belatedly. The said matter came up before this Court in T.C.M.P. Nos.995 and 996 of 1997 on 04.08.1998 wherein the following substantial questions of law have been raised:-

"1. Whether in the facts and in the circumstances of the case the Appellate Tribunal is right in law in holding that the trust is a genuine trust?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in cancelling the assessment made in the hands of C.R.K.Swamy individual?"

After hearing the arguments this Court dismissed the said T.C.M.Ps. and held as follows:-

"The delay cannot be condoned the affidavit is as held as it can possibility be.

The respondent has rightly complained that even the copy served upon herein merely, Court aimed blanks and that not specify the period of delay. No reason worth mentioning is given in support of the prayer for condonation of delay for period of delay is not few days but runs into year. The application for condonation of delay are dismissed."

In view of the dismissal of the Revenue's petitions by this Court, the Trust's case reached finality. In respect of the assessee's own case

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relating to the earlier assessment years 1984-85, 1985-86 and 1986-87, the Revenue is unable to furnish the details as to whether they have filed any appeal against the said orders or not. No fresh evidence or any other material produced before us to substantiate the claim of the Revenue. The Tribunal correctly followed its own orders and decided the matter in favour of the assessee. Hence, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

6. Under these circumstances, the questions referred to above are answered in favour of the assessee and against the Revenue and accordingly the tax cases are dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Madras Bench 'D',
   Madras.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals) III,
   Madras-34.

4. The Wealth Tax Officer,
   Ward I(2), Tambaram.

5. The Gift Tax Officer,
   Ward I(2), Tambaram.

+ 1 CC To Ms.Pushya Sitaraman, Advocate SR NO.31674

T.C.(A) Nos.147 to 149
of 2004

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